

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Philip M. Harry, on behalf of himself and  
all others similarly situated,

Plaintiff,

Civ. No. 12-990 (SRN/JJK)

**ORDER**

v.

HSBC Mortgage Services, Inc.,

Defendant.

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Plaintiff Phillip Harry commenced this action against Defendant HSBC Mortgage Services, Inc. (“HSBC”) asserting that it had foreclosed on his house while he was on active military duty in violation of the Servicemembers Civil Relief Act, 50 U.S.C. App. § 501, et seq. He sought legal and equitable relief on behalf of himself and similarly situated servicemembers who were injured by HSBC. HSBC responded by moving to compel arbitration and stay the action pursuant to the Federal Arbitration Act (FAA), 9 U.S.C. § 1 et seq. It avers that the parties have a binding agreement, which applies to the instant action, that requires them to arbitrate disputes on an individual (non-class) basis if either party so elects. (Johnston 6/20/12 Aff. Ex. 3.)

Harry acknowledges that he is required to arbitrate as HSBC alleges, as long as it can show that his mortgage was never transferred to Fannie Mae or Freddie Mac (because such a transfer would have voided the agreement). (See id. at § 10.) And HSBC has now provided an Affidavit stating that HSBC purchased his mortgage directly from the original

mortgagee and never transferred it to Fannie Mae or Freddie Mac. (Johnston 9/6/12 Aff. ¶ 2.)

Based on the foregoing, the Court finds that: (1) the FAA applies because the parties' arbitration agreement is a "contract evidencing a transaction in commerce;" (2) the agreement is "valid, irrevocable, and enforceable;" and (3) the agreement encompasses the instant action. 9 U.S.C. § 2. Therefore, the Court will grant HSBC's motion to compel arbitration and stay the claims against it. See Pro Tech Indus., Inc. v. URS Corp., 377 F.3d 868, 871 (8th Cir. 2004) ("A court's role under the FAA is . . . limited to determining (1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute.").

Accordingly, **IT IS ORDERED** that HSBC's Motion to Compel Arbitration and Stay Action (Doc. No. 16) is **GRANTED**. This action is **STAYED** pending completion of arbitration.<sup>1</sup>

Dated: September 7, 2012

s/Richard H. Kyle  
RICHARD H. KYLE  
United States District Judge

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<sup>1</sup> In light of the foregoing, the hearing on this Motion, currently scheduled for September 20, 2012 at 8:30 AM, is canceled.